

NAPOLI BERN RIPKA SHKOLNIK, LLP  
Joseph P. Napoli (JP9195)  
Attorneys for Plaintiff  
350 Fifth Avenue, Suite 7413  
New York, New York 10022  
(212) 267-3700

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
FELICITA MELENDEZ, :  
Plaintiff, : CIVIL NO.: 12-CV-8846 (PKC)  
vs. :  
GERARDO RODRIGUEZ, VOLPE DEDICATED, :  
INC., and RITE AID HEADQUARTERS CORP, :  
Defendants. :  
-----X

**DECLARATION OF JOSEPH P. NAPOLI IN SUPPORT OF PLAINTIFF'S MOTION IN  
LIMINE TO PRECLUDE OR SUBSTANTIALLY LIMIT OPINION TESTIMONY OF  
KEVIN GALBREATH**

Joseph P. Napoli, an attorney duly admitted to practice law in the United States District Court for the Southern District of New York, deposes and swears as follows, upon information and belief as follows, under penalty of perjury:

1. I am associated with the law firm of Napoli Bern Ripka Shkolnik, LLP, attorneys for the Plaintiff herein. By virtue of my review of the files maintained by my firm for purposes of prosecuting the Plaintiff's claims, I am fully familiar with the facts, circumstances and procedural history of this litigation.

2. This Declaration is respectfully submitted in support of Plaintiff's motion in limine to preclude or substantially limit the testimony of Kevin Galbreath, a "Transportation Safety Specialist" who was exchanged as an expert witness by defendant RITE-AID

HEADQUARTERS CORP. (hereinafter “Rite-Aid”) on August 9, 2013. A copy of the Notice of Exchange is annexed hereto as Exhibit “1”.

3. Galbreath’s *Curriculum Vitae*, as exchanged by Rite-Aid, is annexed hereto at Exhibit “2”. He has no formal education or degree in the areas on which he will be called to testify, and of the twenty-nine professional training courses he has taken, only one of them was on a subject relevant to his expected testimony.

4. Galbreath’s report is less than three pages long. In it, he states six opinions about the accident that occasioned this litigation. The first five opinions are conclusory legal statements absolving Defendants GERARDO RODRIGUEZ and VOLPE DEDICATED, INC. from responsibility for the accident that occasioned this litigation, which caused the Plaintiff to lose her left leg and full use of her right leg. Galbreath’s sixth opinion is that the Plaintiff should have heard the truck coming, but Galbreath has no training in acoustics or sound, and performed no testing to determine what a pedestrian in Plaintiff’s position at the scene of the accident would have been able to hear. A copy of Galbreath’s report is annexed hereto as Exhibit “3”.

5. Galbreath was deposed on August 28, 2013. A copy of those portions of his deposition cited to in the accompanying Memorandum of Law is annexed hereto as Exhibit “4”.

6. As discussed in the accompanying Memorandum of Law, Galbreath’s lack of qualifications, unreliable methods and irrelevant, prejudicial opinions all warrant an Order of this Court precluding him from testifying at the trial of this action. Accordingly, Plaintiff’s motion should be granted in its entirety.

Dated: New York, New York  
September 11, 2013

---

Joseph P. Napoli (JP9195)  
350 Fifth Avenue, Suite 7413  
New York, NY 10018  
Telephone: (212) 267-3700  
Facsimile: (212) 587-0031  
jnapoli@napolibern.com